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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
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11 JANET WILLIAMS, ) CASE NO. CV 09-07594 RZ  
12 )  
13 Plaintiff, )  
14 vs. ) MEMORANDUM OPINION  
15 ) AND ORDER  
16 MICHAEL J. ASTRUE, Commissioner )  
of Social Security, )  
Defendant. )  
\_\_\_\_\_ )

17 Plaintiff makes three challenges to the Social Security Commissioner's  
18 decision denying her disability benefits. The Court finds the first challenge  
19 incomprehensible. So far as the Court can tell, the Administrative Law Judge did not err  
20 in adopting limitations on Plaintiff's ability to function, based on the evaluation by a  
21 consultant. The Court simply does not follow Plaintiff's argument in this respect.

22 The Court also finds that the Administrative Law Judge acted within the law  
23 in determining that Plaintiff's testimony was not fully credible. The fact of conservative  
24 treatment, observations of the Administrative Law Judge at the hearing, and the ability of  
25 Plaintiff to take care of six children — even older children — are all factors the  
26 Administrative Law Judge properly could consider in determining that Plaintiff's pain was  
27 not as obstructive as she said it was. *Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir.  
28 1995); *Bunnell v. Sullivan*, 947 F.2d 341, 345-46 (9th Cir. 1991) (*en banc*).

1           However, the Administrative Law Judge erred in not discussing the report  
2 submitted by Plaintiff's mother. The Ninth Circuit has stated that lay testimony must be  
3 considered, and cannot be disregarded without comment. *Dodrill v. Shalala*, 12 F.3d 915,  
4 919 (9th Cir. 1993); *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). The  
5 Commissioner made no comment about Plaintiff's mother's report, and thus violated the  
6 requirements of the law as explicated by the Ninth Circuit.

7           It is possible that this doctrine concerning lay witnesses applies just to  
8 *testimony*, and not to lay reports. After all, if a person does not testify, she is not subject  
9 to examination, and the ordinary techniques of evaluating credibility, *see Fair v. Bowen*,  
10 885 F.2d 597, 604 n.5 (9th Cir. 1989), accordingly are not available to the same extent.  
11 While that is a plausible construction of the doctrine, the definition of "evidence" in Social  
12 Security proceedings is quite broad, *see* 20 C.F.R. § 404.1512(b), and the cases have  
13 referenced unsworn lay reports as well as sworn testimony. *See, e.g., Dodrill*, 12 F.3d at  
14 918-19. Thus, the Court cannot say with confidence that the doctrine is limited to lay  
15 testimony alone.

16           The Commissioner argues, however, that the failure to discuss Plaintiff's  
17 mother's comments was not error because the mother's statement was similar to that given  
18 by Plaintiff herself and, since the Administrative Law Judge found Plaintiff's testimony not  
19 fully credible, he would have rejected the information from Plaintiff's mother as well.  
20 (Defendant's Memorandum in Support of Answer at 5-6.) The Commissioner cites  
21 *Valentine v. Commissioner*, 574 F.3d 685, 694 (9th Cir. 2009), for this view, but the case  
22 does not support the proposition; in *Valentine*, the Administrative Law Judge in fact stated  
23 that he rejected the lay witness testimony. *Id.*

24           Likewise unavailing is the Commissioner's citation of *Howard ex rel Wolff*  
25 *v. Barnhart*, 341 F.3d 1006, 1012 (9th Cir. 2003), which the Commissioner relies on for  
26 the proposition that an Administrative Law Judge is not required to discuss every piece of  
27 evidence, and specifically is not required to address evidence that is neither significant nor  
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1 probative. This begs the question; for if the evidence is significant or probative, then the  
2 Administrative Law Judge in fact must address it.

3 Plaintiff's mother's report clearly is significant and probative. The mother  
4 said that Plaintiff mostly stayed in bed while complaining of severe pain, that Plaintiff had  
5 difficulty standing, did not have full use of her hands, and needed help with some basic  
6 personal needs, such as getting dressed. [AR 233-40] If these statements are believed, then  
7 the information is quite pertinent to Plaintiff's ability to work. Under *Stout v.*  
8 *Commissioner*, 454 F.3d 1050 (9th Cir. 2006), "where the ALJ's error lies in a failure to  
9 properly discuss competent lay testimony favorable to the claimant, a reviewing court  
10 cannot consider the error harmless unless it can confidently conclude that no reasonable  
11 ALJ, when fully crediting the testimony, could have reached a different disability  
12 determination." 454 F.3d at 1056. If the mother's report is fully credited, then this Court  
13 cannot say with confidence that the ultimate disability determination would have been the  
14 same. The report would have to be, in some way, discredited for that to happen. But, as  
15 the *Stout* court itself stated, a reviewing court cannot assume that the Administrative Law  
16 Judge would have discredited the lay statement, for the reviewing court can evaluate only  
17 the decision that the Administrative Law Judge actually made, not the decision that he  
18 might have made. 454 F.3d at 1054. The Administrative Law Judge's error cannot be  
19 overlooked as harmless.

20 In accordance with the foregoing, therefore, the Commissioner's decision is  
21 reversed. The matter is remanded to the Commissioner for further proceedings consistent  
22 with this Memorandum Opinion.

23 IT IS SO ORDERED.

24  
25 DATED: August 2, 2010

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27   
28 RALPH ZAREFSKY  
UNITED STATES MAGISTRATE JUDGE